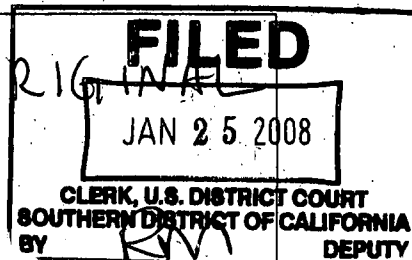


NAME Tomeko MalonePRISON NUMBER V63284CURRENT ADDRESS OR PLACE OF CONFINEMENT P.O. Box 409020CITY, STATE, ZIP CODE Ione, Ca - 95640

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



2254	<input checked="" type="checkbox"/>	1983
FILING FEE PAID		
Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
WFP MOTION FILED		
Yes	<input checked="" type="checkbox"/>	No <input type="checkbox"/>
COPIES SENT TO		
Court	<input checked="" type="checkbox"/>	ProSe

'08 CV 0159 IEG CAB

Civil No. _____

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

TOMEKO MALONE
 (FULL NAME OF PETITIONER)

PETITIONER

v.

ROSABANNE CAMPBELL
 (NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
 PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
 CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of
 California, Additional Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:

San Diego Superior Court 220 W. Broadway, S.D., Ca. 92112

2. Date of judgment of conviction: 6-27-03

3. Trial court case number of the judgment of conviction being challenged:

SCD171069

4. Length of sentence:

11 yrs.

5. Sentence start date and projected release date:

7-25-03 to 1-21-012

6. Offense(s) for which you were convicted or pleaded guilty (all counts):

2 - PC 245(a)(1)

7. What was your plea? (CHECK ONE)

(a) Not guilty ☐

(b) Guilty ☒

(c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

(a) Jury ☐

(b) Judge only ☐

9. Did you testify at the trial?

☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

☒ Yes ☐ No

11. If you appealed in the California Court of Appeal, answer the following:

(a) Result: Denied

(b) Date of result, case number and citation, if known:

(c) Grounds raised on direct appeal:

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

(a) Result:

(b) Date of result, case number and citation, if known:

N/A

(c) Grounds raised:

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: N/A
- (b) Date of result, case number and citation, if known:
- (c) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: 5153396

(b) Nature of proceeding:

Petition for Writ of Habeas Corpus.

(c) Grounds raised:

SAME GROUND AS THIS PETITION

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

(e) Result: _____

(f) Date of result: _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number: Unknown
- (b) Nature of proceeding: SAME AS THIS PETITION
- (c) Grounds raised:
- _____
- _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: _____
- (f) Date of result: _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number: 5153396
- (b) Nature of proceeding: Writ of Habeas Corpus
- (c) Grounds raised:
SAME GROUNDS AS THIS PETITION
- _____
- _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: _____
- (f) Date of result: _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is ~~this~~ your **first** federal petition for writ of habeas corpus challenging this conviction?
☒ Yes ☐ No (If "YES" SKIP TO #22)
- (a) If no, in what federal court was the prior action filed?
 (i) What was the prior case number? _____
 (ii) Was the prior action (CHECK ONE):
☐ Denied on the merits?
☐ Dismissed for procedural reasons?
 (iii) Date of decision: _____
- (b) Were any of the issues in this current petition also raised in the prior federal petition?
☐ Yes ☒ No
- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** San Diego Superior Court violated petitioner's due process of law on their failure to hold ability hearing prior to sentencing to determine the amount of restitution to be made

Supporting FACTS (state *briefly* without citing cases or law)

On July 25, 03 in San Diego Superior Court in Dept. 48 Judge Judith Hayes failure to hold ability hearing to determine the amount of restitution and consideration of a defendant's inability to pay, which includes any future earnings capacity, the defendant was violated of Penal code 1202.4(F)(1) which states: the defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution per Penal Code 1202.4. The judge stated on the record her reasoning for restitution per PC 1202.4(b) see Exhibit (A). In addition on 7-9-03 at Probation interview, the probationer also failed to evaluate factors relating to defendant's ability to make restitution per Cal Rules of Ct. 4.411.5(a)(8) and (11) violating the defendant's due process of law, it appears victim made no claim to the Court.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO:** Ineffective assistance of counsel by not objecting to imposition of illegal restitution fine during sentencing and failure to hold a ability hearing.

Supporting FACTS (state briefly without citing cases or law):

On July 25, 03 in San Diego Superior Court in Dept. 48 Judge Judith Hayes illegally imposed a restitution fine of 2200 and appointed defense counsel Michael Begovich failure to object to an illegal restitution fine violating petitioner's 6th Amend constitutional rights. see Argument and Points and Authorities Page (os) III as Exh (A).

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(c) **GROUND THREE:**

Ineffective assistance of counsel by
not objecting to imposition of the illegal restitution
on Direct Appeal.

Supporting FACTS (state briefly without citing cases or law):

A. Supporting facts: (see Argument and Points and
Authorities Pg. 6 IV. as Exh (n)). Appeals counsel
Susan Cardine

Did you raise GROUND THREE in the California Supreme Court?

☒ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

Michael Begonich

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

Susan Cardine

(f) In any post-conviction proceeding:

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:

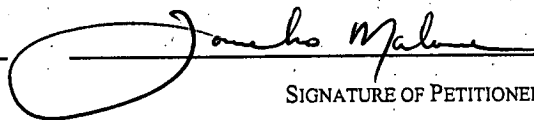
Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1-20-07

(DATE)



SIGNATURE OF PETITIONER

see Exhibit B) as Probation Report Pg. 3 (Victims Highlighted area) on July 25, 03 the victim had still not filed a claim see Exhibit

C) as Court Minute Order (Judgment section - Restitution to victim an amount to be determined, the court made a illegal determination of the amount of restitution to be paid and still failed to hold ability hearing with the defendant, violating his due process of law, the notice of payment and request for direct order for restitution form is wrong, this form is under another name not the defendant's (see Exhibit D)

Defendant's future income will not be enough to pay restitution and will remain on disability, which makes him under the cost of living standards and his inability to pay, the defendant can prove the burden of demonstrating the inability to pay and was not given the opportunity, defendant was presently on disability during his court proceedings and made far below the cost of living wages and bear the burden and the preponderance of evidence to show his inability to pay see Exhibit E) as

Disability Statement. Trial court exceeded its jurisdiction when imposing restitution fine without required ability Hearing (see Argument and Points and Authorities I). as Exhibit (F).

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit:

Court Transcript Pg. 28

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

1 AND HAS BEEN EMPLOYED IN THE PAST. I WILL STRIKE ALL BUT ONE
2 STRIKE.

3 IN THIS MATTER I WILL SELECT THE MIDTERM OF THREE
4 YEARS DOUBLED FOR THE REMAINING STRIKES, SIX YEARS, PLUS FIVE
5 YEARS ON THE NICKEL PRIOR FOR A TOTAL TERM OF ELEVEN YEARS.

6 MR. MALONE, YOU ARE SENTENCED TO SERVE A TERM OF
7 ELEVEN YEARS IN THE DEPARTMENT OF CORRECTIONS. YOUR CUSTODY
8 CREDITS ARE THREE ACTUAL, ZERO 4019 CREDITS, TOTALING THREE
9 DAYS CREDIT FOR TIME SERVED. THE RESTITUTION FINE IS ORDERED
10 IN THE AMOUNT OF \$2,200 PER PENAL CODE SECTION 1202.4 (B) AND
11 \$2,200 TO BE STAYED UPON SUCCESSFUL COMPLETION OF PAROLE.

12 ANYTHING FURTHER IN THIS MATTER?

13 MR. BEGOVICH: NO, YOUR HONOR.

14 MS. SUMMERS: NO, YOUR HONOR.

15 MR. BEGOVICH: MAY I GET THE WHAT I HAD GIVEN YOU BACK
16 TO GIVE HIS WIFE?

17 (UNINTELLIGIBLE OUTBURST BY DEFENDANT)

18 THE COURT: THE NEXT COUNT, THE SECOND COUNT IS SIX
19 YEARS, THE MIDTERM, STAYED PER 654.

20 THANK YOU, COUNSEL.

21 - - -

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 9:45 A.M.)

23 - - -

24

25

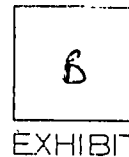
26

27

28

PS

EXHIBIT COVER PAGE



Description of this Exhibit:

Probation Report Pg. 3

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

MALONE, TOMEKO CARCHEZ
SCD-171069

3

07/25/2003

vehicle. At first he thought it was a minor traffic collision. Both cars remained in their respective lanes. Then suddenly the defendant swerved and definitely struck the victim's car. It appeared intentional. Both vehicles sped away and when Oropeza came over the crest of the hill, he saw both vehicles on the shoulder. He pulled over behind the victim. He could see the victim who was in her car hitting the defendant. Oropeza grabbed a piece of rebar and began to run towards the victim's car. As he did so, the defendant backed out of the victim's car with a club, looked directly at Oropeza, and ran to his car and sped away. Oropeza said the club had been altered to become a stable weapon. The silver claw portion of the club was taken off and the red/black portion, approximately 15 inches long was used by the defendant.

Both the victim and witness identified the defendant from a photo line up. There was no defendant statement in the CHP report.

VICTIMS:

RESTITUTION: Not Determined

VICTIM NOTIFIED OF P&S HEARING: Yes

INTENDS TO APPEAR: No

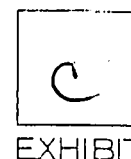
A victim letter was mailed to Sarah Jacquith on 07-08-2003. A follow-up phone call was made on 07-10-03 in which Jacquith indicated her car sustained minor, but noticeable damage to the front right side panel and bumper. She has not had it repaired and yet people comment to her about it. There are areas of rust on her car because of the crime. She has not had an estimate for it to be repaired, but will consider doing so. She did not seek medical help after the crime.

The defendant almost drove into the victim's car. He almost killed her. Then he started to tailgate her. In some respects she feels she should not have reacted by tapping her brakes which seemed to anger him more, but then he purposely ran into her. He was trying to make her run into the car next to her. The defendant seemed to have another male in his car with him. Jacquith thinks the defendant was embarrassed and was trying to show off for his passenger. She pulled and stopped behind him on the side of the road because she was trying to confirm the defendant's car license and to ask police to come so she could exchange insurance and license information with the defendant. She is very sensitive to the smell of alcohol and never smelled alcohol on him. In no way does she believe his actions were chemically induced. The defendant opened her driver's car door in his attempt to get her cell phone. It appeared at the time he would use the club and she found the situation traumatic. However in reflection, she notes he could have, but did not hit her full force.

In some ways Jacquith feels badly for the defendant. She would leave sentencing up to the judge.

As of 07-09-2003 it does not appear the victim has made a claim to the Victim Compensation and Government Claims Board.

EXHIBIT COVER PAGE



Description of this Exhibit:

Court Minute Order

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

SCD171069 DA AAV32001

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 07-25-03 AT 09:00 M. DEPT. 48

CENTRAL ☐ NORTH ☐ EAST ☐ SOUTH ☐
PROB HEAR-SENTENCING

PRESENT: HON JUDITH F. HAYES

CLERK CD SHUMWAY 048

REPORTER L. LANOCHE CSR# 10984
REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128Interpreter _____
Language _____THE PEOPLE OF THE STATE OF CALIFORNIA
MALONE VS. TOMEKO C

N -

DEPUTY DISTRICT ATTORNEY

M. BLOUNT

ATTORNEY FOR DEFENDANT (PD APD PCC RET)

*PC 245(A)(1) *PC 245(A)(1)

RELATION OF _____
LEGATIONS/ENHANCEMENTS _____
PRIORS _____ P.O. _____DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ VIA AUDIO / VISUAL ☐ NOT PRODUCED
☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION ☐ WAIVES HEARING.
PROBATION IS: FORMALLY/SUMMARILY/REMAINS ☐ REVOKED ☐ REINSTATED ☐ MODIFIED ☐ CONTINUED ☐ ST&C ☐ TERMINATED
☐ EXTENDED TO: _____☒ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION/EXECUTION OF SENTENCE IS SUSPENDED.
☒ PROBATION IS: ☒ DENIED ☐ GRANTED _____ YEARS (FORMAL/SUMMARY) TO EXPIRE
☐ COMMITMENT TO SHERIFF FOR _____ DAYS. STAYED TO: _____ ☐ SUCC. COMPLETION OF PROBATION ☐ PAROLE NOT TO BE GRANTED
☐ PERFORM _____ HRS/DAYS PSP/VOL. WORK AT NON-PROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY _____
☐ FOURTH AMENDMENT WAIVER ☐ FORMAL PROBATION REVERTS TO SUMMARY PROBATION
☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ WORK FURLOUGH, REPORT: _____
☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737
☒ DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS ☐ PER PC 1170(d).
☒ FOR _____ LOWER/MIDDLE/UPPER TERM OF _____ YEARS MONTHS/TO LIFE ☐ STIPULATED SENTENCE
ON COUNT _____ CODE & NO. PC245(a)(1) PRINCIPAL COUNT.
☐ CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.
☐ DEFENDANT SENTENCED PER PC 667(b)(1)/1170.12. ☐ NOTICE GIVEN PER PC 12021.
☐ NO VISITATION, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
☐ FINE OF \$ _____ PLUS INCLUDING PENALTY ASSESSMENT.
☒ RESTITUTION FINE OF \$ 2200 PER PC 1202.4(b). ☒ FORTHWITH PER PC 2085.5.
☒ RESTITUTION FINE OF \$ 2200 PER PC 1202.45 SUSPENDED UNLESS PAROLE IS REVOKED.
☒ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT/REST.FUND PER PC 1202.4(f) OF \$ _____ IN AN AMOUNT TO BE DETERMINED.
☐ AT \$ _____ PER MONTH. ☐ COMBINED RATE, TO START 60 DAYS AFTER RELEASE/ON _____ THROUGH REV. AND RECOVERY
☐ DEFENDANT TO PAY PRE-PEA INVESTIGATION AND REPORT PREPARATION COSTS. ☐ RESTITUTION JOINTLY AND SEVERALLY LIABLE.
☐ REFERRED TO REVENUE AND RECOVERY. ☐ COURT APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF \$ _____
☐ DEFT. IS ADVISED REGARDING PAROLE/APPEAL RIGHTS. ☐ REGISTER PER PC290/HS11590/PC186.30/PC457.1 ☐ TESTING PER PC1202.1 HIV-AIDS / PC296.
☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF ☒ WITHOUT BAIL ☐ WITH BAIL SET AT/REDUCED TO/INCREASED TO \$ _____ ☐ PC1275
☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND/POSTED \$ _____ ☐ ON OWN/SUPERVISED RECOGNIZANCE.
☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON OWN/SUPERVISED RECOGNIZANCE ☐ ON DEJ ☐ CASE DISMISSED ☐ THIS CASE ONLY.
☐ PRE-TRIAL SERVICES REPORT ORDERED.
☐ DEFENDANT TO REPORT TO PROBATION/REVENUE & RECOVERY WITHIN 72 HOURS AFTER RELEASE FROM CUSTODY.
☐ DEFT'S WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.
CONTINUED TO/SET FOR _____ AT _____ M. IN DEPT. _____ ON MOTION OF
COURT/DDA/DEFENDANT/PROBATION OFFICER. REASON:CREDIT FOR TIME SERVED
3 DAYS LOCAL
0 DAYS STATE INST.
0 DAYS PC 4019.2000.1
3 TOTAL DAYS CREDIT☒ BENCH WARRANT TO ISSUE, BAIL SET AT \$ _____ ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO _____
☐ BENCH WARRANT ISSUED/ORDERED _____ IS RECALLED/RESCINDED.
☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT \$ _____ BOND NO. _____
BOND COMPANY _____ AGENT _____
☐ BAIL FORFEITURE OF _____ IS SET ASIDE/REINSTATED/EXONERATED. SURETY TO PAY \$ _____ W/IN 30 DAYS. ☐ FEES WAIVED.
☐ PROCEEDINGS SUSPENDED ☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. SERVICE OF PETITION: _____
☐ PER PC 1368. MENTAL COMPETENCY EXAMINATION ON _____ AT _____ PSYCHIATRIC EXAMINING FACILITY.
HEARING ON _____ AT _____ IN DEPARTMENT _____ OF THE CENTRAL COURTHOUSE.
☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING STATED ABOVE.
☐ SUPPLEMENTAL REPORT ORDERED. ☒ REPORT TO REGISTRAR OF VOTERS. ☐ DMV ABSTRACT. B.A.C. _____
☐ PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE DEPARTMENT OF CORRECTIONS PER PC 1203c.
☐ CUSTODY TO RUN CONCURRENT WITH/CONSECUTIVE TO: _____
☐ SEE ATTACHMENT FOR ADDITIONAL COUNTS/ALLEGATIONS/PRIORS

THE DEFENDANT'S MOTION TO STRIKE STRIKES IS GRANTED

3 STRIKES ARE STRIKEN. ONE STRIKE REMAINS.

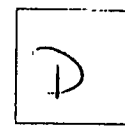
2 PC245(a)(1) MIDDLE TERM 6 YEARS STAYED PER PC654
ON PER PC667(a)(1) 5 YEARS.

TOTAL TERM: 11 YEARS

JUDITH F. HAYES

JUDGE OF THE SUPERIOR COURT

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Notice of Payment

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

0021

STATE BOARD REPRESENTATIVE, ATTORNEY OR PARTY/PERSON WITHOUT ATTORNEY (Name, state bar number, and address):

☐ Recording requested by and return to:

Name:

Address:

Unit No.:

City/State:

Zip Code:

TELEPHONE NO:

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

☐ STATE BOARD REPRESENTATIVE ☐ ATTORNEY ☐ OTHER

Name of court, branch court, if any, and street address:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

- ☒ County Courthouse, 220 W. Broadway, San Diego, CA 92101-3409
☐ East County Division, 250 E. Main St., El Cajon, CA 92020-3941
☐ Juvenile Division, 2851 Meadowlark Dr., San Diego, CA 92123
☐ North County Division, 325 S. Melrose Dr., Vista, CA 92083-6695
☐ South County Division, 500 3rd Ave., Chula Vista, CA 91910-5649

FOR RECORDER'S USE ONLY

CASE NUMBER: SCD171070

FOR COURT USE ONLY

F I L E D
 Clerk of the Superior Court

APR 10 2003

By: F. PALSSON, Deputy

CASE NAME: People v. Emmanuel Lacones Ocular

NOTICE OF PAYMENTS MADE BY CALIFORNIA VICTIM COMPENSATION BOARD AND REQUEST FOR DIRECT ORDER FOR RESTITUTION [Pen. Code, §§ 1202.4(4)(A), 1214; Welf. & Inst. Code, § 730.6(h) & (i); Gov. Code, Article 1 (commencing section 13959) ch. 5, Pt. 4, Div. 3, Tit. 2]

1. a. ☒ On (date): 3-6-2003 defendant (name): Emmanuel Lacones Ocular was charged and or convicted of a crime that entitles a victim to restitution.
 b. ☐ On (date): child (name): had a petition filed and or was adjudged a ward of the court on the ground that he or she is a person described in Welfare and Institutions Code section 602, that entitles a victim to restitution. ☐ Wardship is terminated
2. On (date): 1-21-2003 the California Victim Compensation and Government Claims Board (State Board) received a claim and/or made payment(s) for which it is or will be entitled to recovery and entitled to a direct order for restitution from the above named defendant(s) or minor(s) specified as follows:
 - a. ☒ on behalf of the victim [name or claim number(s)]: See addendum in the amount of: \$ 3,631.81
 - b. ☒ plus interest at 10% per year from the date of ☐ payment(s) made or ☒ sentencing 5-23-2003
 - c. ☐ plus attorney fees and collection costs in the sum of \$
 - d. ☒ the State Board requests deductions by California Department of Corrections from prisoner wages and trust accounts pursuant to Pen. Code § 2085.5(b).
 - e. ☐ this Notice by the State Board supercedes all previous such Notices including the Notice filed on
3. The amount of restitution includes claims and/or payments for:
 - a. ☒ Medical expenses
 - b. ☐ Mental health expenses
 - c. ☒ Income/Support loss
 - d. ☐ Rehabilitation
 - e. ☐ Emergency relocation
 - f. ☐ Funeral/Burial
 - g. ☐ other (specify):
4. The State of California shall be subrogated to the rights of victims to whom cash payments are granted to the extent of the payments granted. The state shall also be entitled to a lien on the judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of said victims. Gov. Code § 13966.01(a) & (b).

Date: 4-10-2003

Michele M. Lingenfelder
 SIGNATURE OF STATE BOARD REPRESENTATIVE OR ATTORNEY
 Michele M. Lingenfelder

NOTE: THE ABOVE AMOUNTS REFLECT BENEFITS THAT THE CALIFORNIA STATE VICTIM COMPENSATION BOARD HAS OR WILL PAY ON BEHALF OF THE ABOVE NAMED VICTIM(S). THESE AMOUNTS MAY NOT REFLECT THE FULL AMOUNT OF LOSSES SUSTAINED BY THE VICTIM(S), PAID BY THE STATE BOARD OR THAT SHOULD BE INCLUDED IN DIRECT ORDERS FOR RESTITUTION PAYABLE TO THE CALIFORNIA STATE VICTIM COMPENSATION BOARD.

0025

ADDENDUM TO NOTICE OF PAYMENTS MADE BY STATE VICTIM COMPENSATION BOARD

CASE NAME: People v. Emmanuel Lacones Ocular	FOR COURT USE ONLY
ADDENDUM TO NOTICE OF PAYMENTS MADE BY STATE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD AND REQUEST FOR DIRECT ORDER FOR RESTITUTION	CASE NUMBER: SCD171070

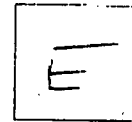
[Continued from Page One]

1. ☐
2. ☒ Pursuant to Penal Code §§ 1202.4(f)(2), (3)(B) & (4)(A): \$ 1,302.48 to reimburse costs of medical expenses paid by the State Board for claim number 752174 (Jason Cleveland). Pursuant to Penal Code §§ 1202.4(f)(2), (3)(D) & (4)(A) and Gov. Code §§ 13965 (a) (2) & 13965.1(a)(1)(A)(B): \$ 782.18 paid by the State Board for claim number 752174 (Jason Cleveland) for loss of wages; \$1,547.15 paid by the State Board for claim number 752269 (Maria Castrillo) for loss of wages.
3. ☐
4. ☐

Date: 4/10/03

Michelle H. Lingenfeld
 SIGNATURE OF STATE BOARD REPRESENTATIVE OR ATTORNEY

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Social Security Disability statement

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

Social Security Administration

Date: May 5, 2004
Claim Number: 554-08-6354A
554-08-6354DI

005646

TOMEKO C MALONE
1913 WEST DR APT 2
VISTA CA 92083-6141

|||||

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter:

Information About Current Social Security Benefits

Beginning September 2003, the full monthly Social Security benefit before any deductions is \$ 0.00.

We deduct \$0.00 for medical insurance premiums each month.

The regular monthly Social Security payment is \$ 0.00.
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third of each month.

Benefits were suspended beginning September 2003.

Date of Birth Information

The date of birth shown on our records is October 1, 1965.

Other Important Information

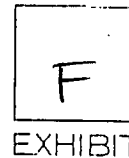
MR. MALONE WAS FOUND TO BE DISABLED UNDER SOCIAL SECURITY RULES ON APRIL 2002. DISABILITY PAYMENTS WERE PAID UNTIL OCTOBER 2003 AND STOPPED DUE TO INCARCERATION.

Type of Social Security Benefit Information

You are entitled to monthly disability benefits.

See Next Page

EXHIBIT COVER PAGE



Description of this Exhibit:

Argument and Points and Authorities

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

TOMEKO C. MAOLONE V#63284
M.C.S.P. A# GYM 125 P.O. BOX - 409020
IONE CA 95640 - 409020

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA AND FOR THE COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA	}	MOTION FOR RESTITUION AND FINES
PLAINTIFF,		
V.	}	CASE NO# SCD171069
TOMEKO C. MALONE		
DEFENDANT	}	

WHEN VICTIM RESTITUTION MAY NOT BE ORDRED

A DEFENDANT MAY NOT BE REQUIRED TO PAY RESTITUTION TO VICTIMS. PEOPLE
V. SCROGGINS (1987) 17 191 CA 3d 502 236 Cr 569.

THE TRIAL COURT MAY NOT DIRECT A DEFENDANT TO MAKE RESTITUTION TO
THE VICTIM. RICHARDS (1976) 17 C3d 614 131 CR 537 542, OVERRULED ON A
DIFFERENT BUT RELATED GROUND IN PEOPLE V. CARBAJAL (1995) 10 C 4TH 1114
43 CR2d 681.

>NOTE: INTERST OF TEN PERCENT PER YEAR ACCRUES ON RESTITUTION ORDERS.
PENAL CODE SECTION §1202.4(F)(3)(F).

PRISON WAGES; PAYMENT OF RESTITUTION AS CONDITION OF PAROLE
VICTIMS RESTITUTION THAT THE VICTIM HAS FILED AN APPLICATION WITH
THE VICTIM OF CRIMES PROGRAM. PENAL CODE SECTION §2085.5(B). SEE GOVT
§§13959 - 13969.4.

INCOME DEDUCTION

THE TRIAL COURT MUST ENTER AN ORDER FOR INCOME DEDUCTION (SOMETIMES CALLED WAGES GARNISHMENT) ONCE RESTITUTION HAS BEEN DETERMINED. GOVT C. 13967.2 SPECIFIES THE PROCEEDURES FOR AND CONTENTS OF THE ORDRES.

> NOTE: ON VICTIM'S REQUEST, THE COURT MUST PROVIDE THE VICTIM WITH A CERTIFIED COPY OF THE RESTITUTION ORDER. PENAL CODE SECTION § 1214(B).

RELATION BETWEEN VICTIN RESTITUTION AND OTHER FINES AND ASSESSEMENTS

THERE IS NO PENALTY ASSESMENTS ON VICTIM RESTITUTION. PEOPLE V. MARTINEZ (1999) 73 CA4TH 265 268 86 CR2D 346.

A RESTITUTION FINE IS NOT REDUCED BY THE AMOUNT OF VICTI, RESTITUTION. PEOPLE V. BLACKBURN (1999) 72 CA4TH 1520 1534 86 CR2D 134.

RESTITUTION HEARING

A. NOTICE TO DEFENDANT AND TO VICTIM

THE DEFENDANT MUST BE GIVEN NOTICE OF THE RESTITUTION HEARING. SEE PENAL CODE SECTION §1214(B). NOTICE MAY BE GIVEN THROUGH THE COURT IN ORDER THAT THE DEFENDANT CAN SEE BEFOR THE RESTITUTION AND FINES REQUIRED TO NOTIFY THE VICTIM OF SENTENCING PROCEEDINGS. PENAL CODE SECTION §§ 679.02(A)(3) 1191.1.

REIMBURSEMENT FOR RESTITUTION AND FINES

A DEFENDANT MAY BE REQUIRED TO A REIMBURSEMENT AND FINES FOR THE FOLLOWING FINES.

A HEARING MUST BE HELD TO SET THE AMOUNT TO BE REIMBURSEMENT UNLESS THE DEFENDANT HAS AGREES WITH THE AMOUNT DETERMINED BY THE COURTS UNDER THE PENAL CODE SECTION §12031B PEOPLE V. ADAMA (1990) 224 CA3d 705 274 CR 945.

THE COURTS MUST CONSIDER THE FINES ASSESSEMENTS AND RESTITUTION THAT THE DEFENDANT MUST PAY WHILE ON PAROLE WHEN A FIXES AMOUNT OF REIMBURSEMENT UNDER THE PENAL CODE SECTION § 12031B.

DATED ____/____/____;

RESPECTFULLY SUBMITTED

/s/ TOMEKO C. MALONE

IN PRO PER :

LEGAL ISSUES ONLY :

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

Michael Begonich

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

Susan Cardine

(f) In any post-conviction proceeding:

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:

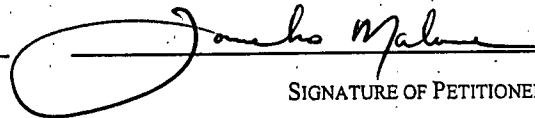
Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1-20-07

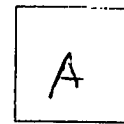
(DATE)



SIGNATURE OF PETITIONER

see Exhibit B) as Probation Report Pg. 3 (Victims Highlighted area) on July 25, 03 the victim had still not filed a claim see Exhibit C) as Court Minute Order (Judgment section - Restitution to victim an amount to be determined, the court made a illegal determination of the amount of restitution to be paid and still failed to hold ability hearing with the defendant, violating his due process of law, the notice of payment and request for direct order for restitution form is wrong, this form is under another name not the defendant's (see Exhibit D) Defendant's future income will not be enough to pay restitution and will remain on disability, which makes him under the cost of living standards and his inability to pay, the defendant can prove the burden of demonstrating the inability to pay and was not given the opportunity, defendant was presently on disability during his court proceedings and made far below the cost of living wages and bear the burden and the preponderance of evidence to show his inability to pay see Exhibit E) as Disability Statement. Trial court exceeded its jurisdiction when imposing restitution fine without required ability Hearing (see Argument and Points and Authorities I). as Exhibit (F).

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Court Transcript Pg. 28

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

1 AND HAS BEEN EMPLOYED IN THE PAST. I WILL STRIKE ALL BUT ONE
2 STRIKE.

3 IN THIS MATTER I WILL SELECT THE MIDTERM OF THREE
4 YEARS DOUBLED FOR THE REMAINING STRIKES, SIX YEARS, PLUS FIVE
5 YEARS ON THE NICKEL PRIOR FOR A TOTAL TERM OF ELEVEN YEARS.

6 MR. MALONE, YOU ARE SENTENCED TO SERVE A TERM OF
7 ELEVEN YEARS IN THE DEPARTMENT OF CORRECTIONS. YOUR CUSTODY
8 CREDITS ARE THREE ACTUAL, ZERO 4019 CREDITS, TOTALING THREE
9 DAYS CREDIT FOR TIME SERVED. THE RESTITUTION FINE IS ORDERED
10 IN THE AMOUNT OF \$2,200 PER PENAL CODE SECTION 1202.4 (B) AND
11 \$2,200 TO BE STAYED UPON SUCCESSFUL COMPLETION OF PAROLE.

12 ANYTHING FURTHER IN THIS MATTER?

13 MR. BEGOVICH: NO, YOUR HONOR.

14 MS. SUMMERS: NO, YOUR HONOR.

15 MR. BEGOVICH: MAY I GET THE WHAT I HAD GIVEN YOU BACK
16 TO GIVE HIS WIFE?

17 (UNINTELLIGBLE OUTBURST BY DEFENDANT)

18 THE COURT: THE NEXT COUNT, THE SECOND COUNT IS SIX
19 YEARS, THE MIDTERM, STAYED PER 654.

20 THANK YOU, COUNSEL.

21 - - -

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 9:45 A.M.)

23 - - -

24

25

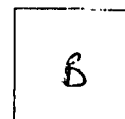
26

27

28

PS

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Probation Report Pg. 3

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

MALONE, TOMEKO CARCHEZ
SCD-171069

3

07/25/2003

vehicle. At first he thought it was a minor traffic collision. Both cars remained in their respective lanes. Then suddenly the defendant swerved and definitely struck the victim's car. It appeared intentional. Both vehicles sped away and when Oropeza came over the crest of the hill, he saw both vehicles on the shoulder. He pulled over behind the victim. He could see the victim who was in her car hitting the defendant. Oropeza grabbed a piece of rebar and began to run towards the victim's car. As he did so, the defendant backed out of the victim's car with a club, looked directly at Oropeza, and ran to his car and sped away. Oropeza said the club had been altered to become a stable weapon. The silver claw portion of the club was taken off and the red/black portion, approximately 15 inches long was used by the defendant.

Both the victim and witness identified the defendant from a photo line up. There was no defendant statement in the CHP report.

VICTIMS:

RESTITUTION: Not Determined

VICTIM NOTIFIED OF P&S HEARING: Yes INTENDS TO APPEAR: No

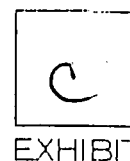
A victim letter was mailed to Sarah Jacquith on 07-08-2003. A follow-up phone call was made on 07-10-03 in which Jacquith indicated her car sustained minor, but noticeable damage to the front right side panel and bumper. She has not had it repaired and yet people comment to her about it. There are areas of rust on her car because of the crime. She has not had an estimate for it to be repaired, but will consider doing so. She did not seek medical help after the crime.

The defendant almost drove into the victim's car. He almost killed her. Then he started to tailgate her. In some respects she feels she should not have reacted by tapping her brakes which seemed to anger him more, but then he purposely ran into her. He was trying to make her run into the car next to her. The defendant seemed to have another male in his car with him. Jacquith thinks the defendant was embarrassed and was trying to show off for his passenger. She pulled and stopped behind him on the side of the road because she was trying to confirm the defendant's car license and to ask police to come so she could exchange insurance and license information with the defendant. She is very sensitive to the smell of alcohol and never smelled alcohol on him. In no way does she believe his actions were chemically induced. The defendant opened her driver's car door in his attempt to get her cell phone. It appeared at the time he would use the club and she found the situation traumatic. However in reflection, she notes he could have, but did not hit her full force.

In some ways Jacquith feels badly for the defendant. She would leave sentencing up to the judge.

As of 07-09-2003 it does not appear the victim has made a claim to the Victim Compensation and Government Claims Board.

EXHIBIT COVER PAGE



Description of this Exhibit:

Court Minute Order

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

SCD171069 DA AAV32001

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 07-25-03 AT 09:00 M. DEPT. 48

CENTRAL ☐ NORTH ☐ EAST ☐ SOUTH ☐
PROB HEAR-SENTENCING

RESENT: HON JUDITH F. HAYES

CLERK CD SHUMPP 048

REPORTER L. LANOCAR CSR# 10984
REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128Interpreter _____
Language _____THE PEOPLE OF THE STATE OF CALIFORNIA
MALONE VS. TOMEKO C

N -

DEPUTY DISTRICT ATTORNEY

M. BELOUSH

ATTORNEY FOR DEFENDANT (PD APD PCC RET)

C1 *PC245(A)(1) C1 *PC245(A)(1)

COLATION OF

LEGATIONS/ENHANCEMENTS

PRIORS

P.O.

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ VIA AUDIO / VISUAL ☐ NOT PRODUCED

☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION ☐ WAIVES HEARING.
☐ PROBATION IS: FORMALLY/SUMMARILY/REMAINS ☐ REVOKED ☐ REINSTATED ☐ MODIFIED ☐ CONTINUED ☐ ST&C ☐ TERMINATED
☐ EXTENDED TO:

☒ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION/EXECUTION OF SENTENCE IS SUSPENDED.
☒ PROBATION IS: ☒ DENIED ☐ GRANTED _____ YEARS (FORMAL/SUMMARY) TO EXPIRE
☐ COMMITMENT TO SHERIFF FOR _____ DAYS. STAYED TO: _____ ☐ SUCC. COMPLETION OF PROBATION ☐ PAROLE NOT TO BE GRANTED
☐ PERFORM _____ HRS/DAYS PSP/VOL. WORK AT NON-PROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY _____
☐ FOURTH AMENDMENT WAIVER ☐ FORMAL PROBATION REVERTS TO SUMMARY PROBATION
☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ WORK FURLOUGH, REPORT: _____
☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737
☒ DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS ☐ PER PC 1170(d).
☒ FOR _____ LOWER/MIDDLE/UPPER TERM OF _____ YEARS MONTHS/TO LIFE ☐ STIPULATED SENTENCE
ON COUNT 1 CODE & NO. PC245(a)(1) PRINCIPAL COUNT.
☐ CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.
☐ DEFENDANT SENTENCED PER PC 667(b)-(1)/1170.12. ☐ NOTICE GIVEN PER PC 12021.
☐ NO VISITATION, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
☐ FINE OF \$ _____ PLUS /INCLUDING PENALTY ASSESSMENT.
☒ RESTITUTION FINE OF \$ 2200 PER PC 1202.4(b). ☒ FORTHWITH PER PC 2085.5.
☒ RESTITUTION FINE OF \$ 2200 PER PC 1202.45 SUSPENDED UNLESS PAROLE IS REVOKED.
☒ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT/REST.FUND PER PC 1202.4(f) OF \$ _____ IN AN AMOUNT TO BE DETERMINED.
☐ AT \$ _____ PER MONTH. ☐ COMBINED RATE, TO START 60 DAYS AFTER RELEASE/ON _____ THROUGH REV. AND RECOVERY
☐ DEFENDANT TO PAY PRE-PEA INVESTIGATION AND REPORT PREPARATION COSTS. ☐ RESTITUTION JOINTLY AND SEVERALLY LIABLE.
☐ REFERRED TO REVENUE AND RECOVERY. ☐ COURT APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF \$ _____
☐ DEFT. IS ADVISED REGARDING PAROLE/APPEAL RIGHTS. ☐ REGISTER PER PC290/HS11590/PC186.30/PC457.1 ☐ TESTING PER PC1202.1 HIV-AIDS / PC296.
☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF ☒ WITHOUT BAIL ☐ WITH BAIL SET AT/REDUCED TO/INCREASED TO \$ _____ ☐ PC1275
☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED \$ _____ ☐ ON OWN/SUPERVISED RECOGNIZANCE.
☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON OWN/SUPERVISED RECOGNIZANCE ☐ ON DEJ ☐ CASE DISMISSED ☐ THIS CASE ONLY.
☐ PRE-TRIAL SERVICES REPORT ORDERED.
☐ DEFENDANT TO REPORT TO PROBATION/REVENUE & RECOVERY WITHIN 72 HOURS AFTER RELEASE FROM CUSTODY.

CREDIT FOR TIME SERVED

3 DAYS LOCAL

DAYS STATE INST.

0 DAYS PC 4019/2055.1

3 TOTAL DAYS CREDIT

☐ DEFT'S WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.
CONTINUED TO/SET FOR _____ AT _____ M. IN DEPT. _____ ON MOTION OF
COURT/DDA/DEFENDANT/PROBATION OFFICER. REASON:
☒ BENCH WARRANT TO ISSUE, BAIL SET AT \$ _____ ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO _____
☐ BENCH WARRANT ISSUED/ORDERED _____ IS RECALLED/RESCINDED.
☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT \$ _____ BOND NO. _____
BOND COMPANY _____ AGENT _____
☐ BAIL FORFEITURE OF _____ IS SET ASIDE/REINSTATED/EXONERATED. SURETY TO PAY \$ _____ W/IN 30 DAYS. ☐ FEES WAIVED.
☐ PROCEEDINGS SUSPENDED ☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. SERVICE OF PETITION: _____
☐ PER PC 1368. MENTAL COMPETENCY EXAMINATION ON _____ AT _____ PSYCHIATRIC EXAMINING FACILITY.
HEARING ON _____ AT _____ IN DEPARTMENT _____ OF THE CENTRAL COURTHOUSE.
☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING STATED ABOVE.
☐ SUPPLEMENTAL REPORT ORDERED. ☒ REPORT TO REGISTRAR OF VOTERS. ☐ DMV ABSTRACT. B.A.C. _____
☐ PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE DEPARTMENT OF CORRECTIONS PER PC 1203c.
☐ CUSTODY TO RUN CONCURRENT WITH/CONSECUTIVE TO:
☐ SEE ATTACHMENT FOR ADDITIONAL COUNTS/ALLEGATIONS/PRIORS

THE DEFENDANT'S MOTION TO STRIKE STRIKES IS GRANTED

3 STRIKES ARE STRIKEN. ONE STRIKE REMAINS.

2 PC245(a)(1) MID TERM 6 YEARS STAYED PER PC654

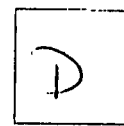
ON PER PC667(a)(1) 5 YEARS.

TOTAL TERM: 11 YEARS

JUDITH F. HAYES

JUDGE OF THE SUPERIOR COURT

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Notice of Payment

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

0021

STATE BOARD REPRESENTATIVE, ATTORNEY OR PARTY/PERSON WITHOUT ATTORNEY (Name, state bar number, and address):

☐ Recording requested by and return to:

Name:

Address:

Unit No.:

City/State:

Zip Code:

TELEPHONE NO:

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

☐ STATE BOARD REPRESENTATIVE ☐ ATTORNEY ☐ OTHER

Name of court, branch court, if any, and street address:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

- ☒ County Courthouse, 220 W. Broadway, San Diego, CA 92101-3409
☐ East County Division, 250 E. Main St., El Cajon, CA 92020-3941
☐ Juvenile Division, 2851 Meadowlark Dr., San Diego, CA 92123
☐ North County Division, 325 S. Melrose Dr., Vista, CA 92083-6695
☐ South County Division, 500 3rd Ave., Chula Vista, CA 91910-5649

FOR RECORDER'S USE ONLY

CASE NUMBER: SCD171070

FOR COURT USE ONLY

F I L E D
 Clerk of the Superior Court

APR 10 2003

By: F. PALSSON, Deputy

CASE NAME: People v. Emmanuel Lacones Ocular

NOTICE OF PAYMENTS MADE BY CALIFORNIA VICTIM COMPENSATION BOARD AND REQUEST FOR DIRECT ORDER FOR RESTITUTION [Pen. Code, §§ 1202.4(4)(A), 1214; Welf. & Inst. Code, § 730.6(h) & (i); Gov. Code, Article 1 (commencing section 13959) ch. 5, Pt. 4, Div. 3, Tit. 2]

1. a. ☒ On (date): 3-6-2003 defendant (name): Emmanuel Lacones Ocular was charged and or convicted of a crime that entitles a victim to restitution.
 b. ☐ On (date): child (name): had a petition filed and or was adjudged a ward of the court on the ground that he or she is a person described in Welfare and Institutions Code section 602, that entitles a victim to restitution. ☐ Wardship is terminated

2. On (date): 1-21-2003 the California Victim Compensation and Government Claims Board (State Board) received a claim and/or made payment(s) for which it is or will be entitled to recovery and entitled to a direct order for restitution from the above named defendant(s) or minor(s) specified as follows:
 a. ☒ on behalf of the victim [name or claim number(s)]: See addendum in the amount of: \$ 3,631.81
 b. ☒ plus interest at 10% per year from the date of ☐ payment(s) made or ☒ sentencing 5-23-2003
 c. ☐ plus attorney fees and collection costs in the sum of \$
 d. ☒ the State Board requests deductions by California Department of Corrections from prisoner wages and trust accounts pursuant to Pen. Code § 2085.5(b).
 e. ☐ this Notice by the State Board supercedes all previous such Notices including the Notice filed on

3. The amount of restitution includes claims and/or payments for:

- a. ☒ Medical expenses
 b. ☐ Mental health expenses
 c. ☒ Income/Support loss
 d. ☐ Rehabilitation
 e. ☐ Emergency relocation
 f. ☐ Funeral/Burial
 g. ☐ other (specify):

4. The State of California shall be subrogated to the rights of victims to whom cash payments are granted to the extent of the payments granted. The state shall also be entitled to a lien on the judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of said victims. Gov. Code § 13966.01(a) & (b).

Date: 4-10-2003

Michele M. Lingenfelder
 SIGNATURE OF STATE BOARD REPRESENTATIVE OR ATTORNEY
 Michele M. Lingenfelder

NOTE: THE ABOVE AMOUNTS REFLECT BENEFITS THAT THE CALIFORNIA STATE VICTIM COMPENSATION BOARD HAS OR WILL PAY ON BEHALF OF THE ABOVE NAMED VICTIM(S). THESE AMOUNTS MAY NOT REFLECT THE FULL AMOUNT OF LOSSES SUSTAINED BY THE VICTIM(S), PAID BY THE STATE BOARD OR THAT SHOULD BE INCLUDED IN DIRECT ORDERS FOR RESTITUTION PAYABLE TO THE CALIFORNIA STATE VICTIM COMPENSATION BOARD.

0025

ADDENDUM TO NOTICE OF PAYMENTS MADE BY STATE VICTIM COMPENSATION BOARD

CASE NAME: People v. Emmanuel Lacones Ocular	FOR COURT USE ONLY
ADDENDUM TO NOTICE OF PAYMENTS MADE BY STATE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD AND REQUEST FOR DIRECT ORDER FOR RESTITUTION	CASE NUMBER: SCD171070

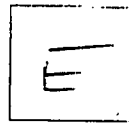
[Continued from Page One]

1. ☐
2. ☒ Pursuant to Penal Code §§ 1202.4(f)(2), (3)(B) & (4)(A): \$ 1,302.48 to reimburse costs of medical expenses paid by the State Board for claim number 752174 (Jason Cleveland). Pursuant to Penal Code §§ 1202.4(f)(2), (3)(D) & (4)(A) and Gov. Code §§ 13965 (a) (2) & 13965.1(a)(1)(A)(B): \$ 782.18 paid by the State Board for claim number 752174 (Jason Cleveland) for loss of wages; \$1,547.15 paid by the State Board for claim number 752269 (Maria Castrillo) for loss of wages.
3. ☐
4. ☐

Date: 4/10/03

Michelle H. Lingenfelter
 SIGNATURE OF STATE BOARD REPRESENTATIVE OR ATTORNEY

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Social Security Disability statement

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

Social Security Administration

Date: May 5, 2004
Claim Number: 554-08-6354A
554-08-6354DI

005646

TOMEKO C MALONE
1913 WEST DR APT 2
VISTA CA 92083-6141

|||||

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter:

Information About Current Social Security Benefits

Beginning September 2003, the full monthly Social Security benefit before any deductions is \$ 0.00.

We deduct \$0.00 for medical insurance premiums each month.

The regular monthly Social Security payment is \$ 0.00.
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third of each month.

Benefits were suspended beginning September 2003.

Date of Birth Information

The date of birth shown on our records is October 1, 1965.

Other Important Information

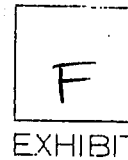
MR. MALONE WAS FOUND TO BE DISABLED UNDER SOCIAL SECURITY RULES ON APRIL 2002. DISABILITY PAYMENTS WERE PAID UNTIL OCTOBER 2003 AND STOPPED DUE TO INCARCERATION.

Type of Social Security Benefit Information

You are entitled to monthly disability benefits.

See Next Page

EXHIBIT COVER PAGE



Description of this Exhibit:

Argument and Points and Authorities

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

TOMEKO C. MALONE V#63284
M.C.S.P. A# GYM 125 P.O. BOX - 409020
TONE CA 95640 - 409020

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA AND FOR THE COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA	}	MOTION FOR RESTITUION AND FINES
PLAINTIFF,		
V.	}	CASE NO# SCD171069
TOMEKO C. MALONE		
DEFENDANT	}	

WHEN VICTIM RESTITUTION MAY NOT BE ORDRED

A DEFENDANT MAY NOT BE REQUIRED TO PAY RESTITUTION TO VICTIMS. PEOPLE
V. SCROGGINS (1987) 17 191 CA 3d 502 236 Cr 569.

THE TRIAL COURT MAY NOT DIRECT A DEFENDANT TO MAKE RESTITUTION TO
THE VICTIM. RICHARDS (1976) 17 C3d 614 131 CR 537 542, OVERRULED ON A
DIFFERENT BUT RELATED GROUND IN PEOPLE V. CARBAJAL (1995) 10 C 4TH 1114
43 CR2d 681.

>NOTE: INTERST OF TEN PERCENT PER YEAR ACCRUES ON RESTITUTION ORDERS.
PENAL CODE SECTION §1202.4(F)(3)(F).

PRISON WAGES; PAYMENT OF RESTITUTION AS CONDITION OF PAROLE
VICTIMS RESTITUTION THAT THE VICTIM HAS FILED AN APPLICATION WITH
THE VICTIM OF CRIMES PROGRAM. PENAL CODE SECTION §2085.5(B). SEE GOVT
§§13959 - 13969.4.

INCOME DEDUCTION

THE TRIAL COURT MUST ENTER AN ORDER FOR INCOME DEDUCTION (SOMETIMES CALLED WAGES GARNISHMENT) ONCE RESTITUTION HAS BEEN DETERMINED. GOVT C. 13967.2 SPECIFIES THE PROCEEDURES FOR AND CONTENTS OF THE ORDRES.

> NOTE: ON VICTIM'S REQUEST, THE COURT MUST PROVIDE THE VICTIM WITH A CERTIFIED COPY OF THE RESTITUTION ORDER. PENAL CODE SECTION § 1214(B).

RELATION BETWEEN VICTIN RESTITUTION AND OTHER FINES AND ASSESSEMENTS

THERE IS NO PENALTY ASSESMENTS ON VICTIM RESTITUTION. PEOPLE V. MARTINEZ (1999) 73 CA4TH 265 268 86 CR2D 346.

A RESTITUTION FINE IS NOT REDUCED BY THE AMOUNT OF VICTI, RESTITUTION. PEOPLE V. BLACKBURN (1999) 72 CA4TH 1520 1534 86 CR2D 134.

RESTITUTION HEARING

A. NOTICE TO DEFENDANT AND TO VICTIM

THE DEFENDANT MUST BE GIVEN NOTICE OF THE RESTITUTION HEARING. SEE PENAL CODE SECTION §1214(B). NOTICE MAY BE GIVEN THROUGH THE COURT IN ORDER THAT THE DEFENDANT CAN SEE BEFOR THE RESTITUTION AND FINES REQUIRED TO NOTIFY THE VICTIM OF SENTENCING PROCEEDINGS. PENAL CODE SECTION §§ 679.02(A)(3) 1191.1.

REIMBURSEMENT FOR RESTITUTION AND FINES

A DEFENDANT MAY BE REQUIRED TO A REIMBURSEMENT AND FINES FOR THE FOLLOWING FINES.

A HEARING MUST BE HELD TO SET THE AMOUNT TO BE REIMBURSEMENT UNLESS THE DEFENDANT HAS AGREES WITH THE AMOUNT DETERMINED BY THE COURTS UNDER THE PENAL CODE SECTION §12031B PEOPLE V. ADAMA (1990) 224 CA3d 705 274 CR 945.

THE COURTS MUST CONSIDER THE FINES ASSESSEMENTS AND RESTITUTION THAT THE DEFENDANT MUST PAY WHILE ON PAROLE WHEN A FIXES AMOUNT OF REIMBURSEMENT UNDER THE PENAL CODE SECTION § 12031B.

DATED ____/____/____;

RESPECTFULLY SUBMITTED

/s/ TOMEKO C. MALONE

IN PRO PER :

LEGAL ISSUES ONLY :

CALIFORNIA DEPARTMENT OF CORRECTIONS
MULE CREEK STATE PRISON
INMATE TRUST ACCOUNTING SYSTEM
~~INMATE TRUST ACCOUNT STATEMENT~~

FOR THE PERIOD: AUG. 01, 2007 THRU DEC. 31, 2007

ACCOUNT NUMBER : V63284

BED/CELL NUMBER: A GY000000001251

ACCOUNT NAME : MALONE, TONERO CARCHEZ

ACCOUNT TYPE: I

PRIVILEGE GROUP: A

TRUST ACCOUNT ACTIVITY									
TRAN	DATE	CODE	DESCRIPTION	COMMENT	CHECK	MIN	DEPOSITS	THORAWALE	BALANCE
	08/01/2007		BEGINNING BALANCE						0.00
	08/20	DD34	EFT DEPOSIT @ WU	0643			67.50		67.50
	08/20	FC01	DRAW FAC	3/PAYD 0452				25.00	42.50
	08/21	W536	COPAY CHARGE	COPAY 0666				5.00	37.50
	08/29	W215	FEDERAL FILIN	FFF 769				13.50	24.00
	08/29	W215	FEDERAL FILIN	FFF 769				13.50	10.50
	09/05	D201	FAMILY VISIT	FV 0810			89.10		99.60
	09/07	W502	POSTAGE CHARG	0930 0869				9.86	89.74
	09/15	W415	CASH WITHDRAW	FV CARD 053 47444579				20.10	69.64
	10/11	W516	LEGAL COPY CH	1010 1323				0.50	69.14
	11/19	W516	LEGAL COPY CH	1018 1891				0.34	68.80

CURRENT HOLDS IN EFFECT				
DATE PLACED	HOLD CODE	DESCRIPTION	COMMENT	HOLD AMOUNT
09/27/2007	H110	COPIES HOLD	0425 1129	5.00
11/06/2007	H114	COPAY FEE, MED	COPAY 1677	5.00
11/06/2007	H114	COPAY FEE, MED	COPAY 1677	5.00
11/06/2007	H114	COPAY FEE, MED	COPAY 1677	5.00
11/13/2007	H114	COPAY FEE, MED	COPAY 1791	5.00
11/28/2007	H118	LEGAL COPIES HOLD	1127 1982	43.60
11/28/2007	H118	LEGAL COPIES HOLD	1127 1982	43.60

RESTITUTION ACCOUNT ACTIVITY

DAT SENTENCED: 07/25/03

CASE NUMBER: SCD171069

COU BY CODE: SD

FINE AMOUNT: 1 2,076.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT	BALANCE
08/01/2007		BEGINNING BALANCE		2,076.50

MULE CREEK STATE PRISON
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: AUG 01, 2007 THRU DEC 03, 2007

ACCT: V63284 ACCT NAME: MALONE, TOMERO CARCHEZ ACCT TYPE: I

* RESTITUTION ACCOUNT ACTIVITY

DATE SENTENCED: 07/25/03 CASE NUMBER: SCD171069
COUNTY CODE: SD FINE AMOUNT: \$ 2,200.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT.	BALANCE
08/20/07	DR34	REST DED-EFT DEPOSIT	75.00	2,001.50

* THIS STATEMENT DOES NOT REFLECT THE ADMINISTRATIVE FEE CHARGE THAT *
* IS EQUAL TO TEN PERCENT OF THE RESTITUTION AMOUNT COLLECTED. *

TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
0.00	155.60	155.60	0.00	94.70	0.00
					CURRENT AVAILABLE BALANCE
					94.70

ACCOUNT INFORMATION

SPECIAL ITEMS

ACCOUNT NUMBER: V63284
ACCOUNT NAME: MALONE, TOMERO CARCHAZ
ACCOUNT TYPE: I
CURRENT BALANCE: 0.00
HOLD BALANCE: 94.70
ENCUM. BALANCE: 0.00
AVAILABLE: 94.70
PRIVILEGE GROUP: A
LAST CANTEEN: 08/20/2007

ABNORMAL BALANCE

RESTITUTION FINES

RS403A

CASE NUMBER	DATE SENTENCED	COUNTY CODE	FINE AMOUNT	BALANCE	STATUS
SCD171069	07/25/2005	SD	2,200.00	2,001.50	C
SCN160814	01/10/2005	SD	200.00	200.00	

TO VIEW REST. XACTS, PLACE AN 'X' NEXT TO CASE #, AND PRESS F1

REST	ACCOUNT	DISPLAY	SELECT	PRINT	ITAS
XACTS	DISPLAY	HOLDS	NEW ACCT	SCREEN	MENU

ABSTRACT OF JUDGMENT
ON RESTITUTION AND FINES ORDERS

PEOPLE OF THE STATE OF CALIFORNIA vs.
 DEFENDANT: **TOMEKO C MALONE**

0062

SCD171069

-A

-B

-C

FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- a. RESTITUTION FINE of: **\$2200** per PC 1202.4(b) forthwith per PC 2085.5.
 b. RESTITUTION FINE of: **\$2200** per PC 1202.45 suspended unless parole is revoked.
 c. RESTITUTION of: \$_____ per PC 1202.4(f) to ☒ victim(s)* ☐ Restitution Fund
 (*List victim name(s) if known and amount breakdown in item 11, below.)
 (1) ☒ Amount to be determined.
 (2) ☐ Interest rate of: _____% (not to exceed 10% per PC 1202.4(f)(3)(F)).
 d. ☐ LAB FEE of: \$_____ for counts: _____ per H&SC 11372.5(a).
 e. ☐ DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
 f. ☐ FINE of \$_____ per PC 1202.5.

TESTING

- a. ☐ AIDS pursuant to ☐ PC 1202.1 ☐ other (specify):
 b. ☐ DNA pursuant to ☐ PC 290.2 ☐ other (specify):

Other orders (specify):

Execution of sentence imposed:

- a. ☒ at initial sentencing hearing.
 b. ☐ at resentencing per decision on appeal.
 c. ☐ after revocation of probation.
 d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
 e. ☐ other (specify):

CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT	
SCD171069 -A	3	3	0	<input type="checkbox"/> 40 <input type="checkbox"/> 29: <input type="checkbox"/> 40 <input type="checkbox"/> 29
-B				<input type="checkbox"/> 40 <input type="checkbox"/> 29
-C				<input type="checkbox"/> 40 <input type="checkbox"/> 29
-D				<input type="checkbox"/> 40 <input type="checkbox"/> 29

DATE SENTENCE PRONOUNCED:

07-25-03

SERVED TIME IN STATE INSTITUTION:

☐ DMH

☐ CDC

☐ CRC

The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify): _____

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

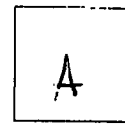
DEPUTY'S SIGNATURE

SHURLAND

DATE

08-04-03

EXHIBIT COVER PAGE



EXHIBIT

Description of this Exhibit:

Argument and Points and Authorities.

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

- ☐ Municipal Court
- ☒ Superior Court
- ☐ Appellate Court
- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

1 In light of low prison wage rates (see California Code of Regulations,
 2 Title 15, section 3040(a); California Department of Corrections, Operations
 3 Manual, section 51120.1), it is apparent the possibility petitioner might obtain
 4 a work assignment while imprisoned does not alone support the ability to pay a
 5 restitution fine (see People v. Walker, 1 Cal.Rptr.2d 902 (1991)). Therefore,
 6 in petitioner's case, the sentencing judge's reasoning for a \$5,000 restitution
 7 fine is in contradiction to state law. See also, California Gov't Code, section
 8 13967 and People v. Masbruch, 41 Cal.Rptr.2d 381.

9 For the sentencing judge to impose a restitution fine based solely on
 10 what petitioner would earn from prison wages during his incarceration violates
 11 petitioner's rights under the Constitution of and for California and the United
 12 States of America.

13 III

14
 15 APPOINTED DEFENSE COUNSEL FAILED TO
 16 PROVIDE PETITIONER WITH ADEQUATE
 17 REPRESENTATION BY NOT OBJECTING TO
 IMPOSITION OF ILLEGAL RESTITUTION
 FINE DURING SENTENCING

18 It is unknown to petitioner as to why appointed defense counsel did not
 19 at the time of sentencing object to the illegally imposed restitution fine and
 20 appointed defense counsel refuses to cooperate with petitioner when petitioner
 21 has made inquiries with appointed defense counsel as to this matter. Clearly,
 22 appointed defense counsel had a duty during sentencing to object to an illegal
 23 restitution fine, however, failed to do so.

24 For appointed defense counsel not to object to the illegally imposed
 25 restitution fine as a part of petitioner's sentence is a violation of petition-
 26 er's rights under the Constitutions of and for California and the United States
 27 of America.

28 ///

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit:

Argument and Points and Authorities

Number of pages to this Exhibit: 1 pages.

JURISDICTION: (Check only one)

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- ☒ Superior Court
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- ☐ State Supreme Court
- ☐ United States District Court
- ☐ State Circuit Court
- ☐ United States Supreme Court
- ☐ Grand Jury

IV

APPOINTED APPELLATE COUNSEL FAILED TO
PROVIDE PETITIONER ADEQUATE REPRESENTATION
BY NOT RAISING THE ILLEGALLY IMPOSED
RESTITUTION FINE ON DIRECT APPEAL

4

During direct appeal, appointed appellate counsel failed to raise the issue of the illegally imposed restitution fine. Petitioner was therefore deprived of adequate representation on the appellate level.

When petitioner had made inquiries to appointed counsel as to why he had not raised the restitution issue, counsel claimed that he could not "recall the issue." When an attorney is confronted with a duty which he is required to do but did not, not being able to recall the issue is a commonly used excuse in which an attorney knows that he failed to adequately represent an individual as required and rather than admitting any wrong doing, he escapes responsibility of inadequate representation knowing that if he lies about the inadequate representation and if proof should arise which confirms that he did fail in his duty to adequately represent, he may find himself as the subject of a law suit. However, if he is unable to recall, and proof arises which demonstrates inadequate representation, he cannot be held responsible for lying about the matter because one cannot be held responsible for memory loss.

Because one cannot recall does not prevent him from reviewing his records and determining as to why he did not raise a particular issue. Appellate counsel in this particular case chose not to review his records and in not doing so wilfully chose not to resolve the question as to why he did not raise the issue on direct appeal.

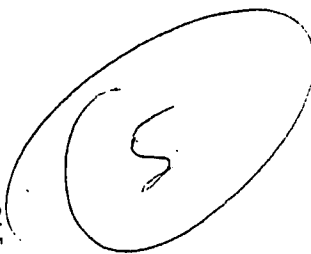
For appointed appellate counsel not to have raised an issue in which the sentencing court has exceeded its jurisdiction constitutes a violation of petitioner's rights under the Constitutions of and for California and the United States of America.

1 that is not authorized by law whenever the error comes to the attention of the
2 court. See in re Hoddinott, 50 Cal.Rptr.2d 706, 708 fn. 2 (1996). This parti-
3 cular ruling was made by the Third District Appellate Court who has now ignored
4 their own practice of review in such matters.

5 In refusing to address and resolve petitioner's petition, the appellate
6 court has violated petitioner's rights to due process under the Constitutions
7 of and for California and the United States of America.

8
9 VI

10 IN AN ISSUE INVOLVING A COURT
11 EXCEEDING JURISDICTION, PETITIONER
12 NEED NOT PROVIDE AN EXPLANATION OF
SUBSTANTIAL DELAY IN ADDRESSING THE MATTER



13 The rule requiring a petitioner to justify any substantial delay in
14 raising a claim is inappropriate to a claim such as a sentencing error amounting
15 to an excess of jurisdiction. See In re Hoddinott, supra.

16 For the lower courts to deny petitioner's petition based on substantial
17 delay is a violation of petitioner's due process rights under the Constitutions
18 of and for California and the United States of America.

19
20 VII

21 THE ISSUE OF RESTITUTION
22 IS NOT A MOOT SUBJECT

23 The subject of restitution in this matter is not considered moot due to
24 the fact that appellant is still incarcerated within the department of correc-
25 tions regarding the sentence which the excessive restitution fine was imposed.

26 ///

27 ///

28 ///

VERIFICATION

I Mr. Tomoko Malone state:

I am the petitioner in this action, I have read the foregoing petition for writ of habeas corpus and the facts stated therein are true of my own knowledge, except as to matter that are therein stated on my own information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Male Creek State Prison.

Date: 6-1-07

Tomoko Malone
PETITIONER

3. Vacate the judgment of the court.

4. Grant Telephonic Hearing to inform petitioner

5. Grant Telephonic Hearing to inform petitioner if the Court deems proper.

PRAYER FOR RELIEF

VACATE THE JUDGMENT

Petitioner is without remedy save by writ of Habeas Corpus

WHEREFORE, petitioner prays the court

1. Issue a Writ of Habeas Corpus
2. Decline the rights of the parties
3. Vacate the judgment of Restitution Fines / Delete / remove / eliminate
4. Grant Telephonic Hearing to inform petitioner
5. Grant any other and further relief the Court deems proper.
6. Reimburse petitioner all monies taken from restitution.

Date: 6-1-07

Respectfully Submitted,

James Mahan

DECLARATION OF SERVICE BY MAIL

CASE NAME: _____ CASE NO: _____

I, Tamacho Malana, am a resident of the state of California Mule Creek State Prison (M. C. S. P) at Ione, County of Amador, California, and am at least 18 years of age, and am party to the within action. My mailing address is P.O. Box 409000, Ione, California 95640-9000.

On 1-20-08, I served a true and correct copy of the following document(s):Habeas Corpus Petition (Restitution)

On each party listed below by placing it in a sealed envelope, with adequate postage or provided, and depositing said envelope in the institutional mail box or turned said envelope to custodial personnel for the United States Mail at Mule Creek State Prison, P.O. Box 409000, Ione, California 956409000. Each party to the action has been duly served.

This copy is being mailed to:

U-S District Court
880 Front St. Ste. 4290
San Diego, Ca. 92101-8900

I have mailed additional copies to:

There is regular service by the United States Mail between the above place of mailing and the parties listed.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this date: 1-20, 20 08, at Ione, California.Signed: [Signature], CDC No: ✓ 63124

M. C. S. P MAILROOM ACKNOWLEDGEMENT OF MAILING

DATE: _____ SIGNED: _____

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of informing the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Tomeko Malone

Roseanne Campbell

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Amador
(EXCEPT IN U.S. PLAINTIFF CASES)

2254 1983
FILING FEE PAID
Yes No
LITIGATION FILED
Yes No
COPIES SENT TO
Court Yes No

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Amador
(IN U.S. PLAINTIFF CASES ONLY)

FILED
JAN 25 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RVI DEPUTY

NOT IN LAND CONDEMNATION CASES. USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Tomeko Malone
PO Box 409020
Ione, CA 95640
V-63284

'08 CV 0159 IEG CAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 1/25/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Meeks